

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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STEPHEN ROSADO,

07 CV 7598 (DC)

Plaintiff,

-against-

VERIFIED
COMPLAINT
AND DEMAND FOR
A JURY TRIAL

THE CITY OF NEW YORK,
AND NEW YORK CITY
CORRECTION OFFICERS
“JOHN DOE (1) & (2), SUED
INDIVIDUALLY AND IN
THEIR OFFICIAL CAPACITY,

Defendants.

-----X

1. This is an action for compensatory and punitive damages for violation of Plaintiff's civil rights under the Eighth and Fourteenth Amendments to the Constitution of the United States and for negligence, negligent hiring, retention and supervision, and intentional infliction of emotional distress, by reason of the unlawful acts of defendants.

JURISDICTION

2. This action is brought pursuant to 42 U.S.C. § 1983. Jurisdiction is founded upon 28 U.S.C. § 1333. Venue is proper in this district under 28 U.S.C. sec. 1331(b) in that all claims arose in this district.

PARTIES

3. Plaintiff STEPHEN ROSADO is an individual who at the time of this incident resided in Kings County.

4. At all times hereinafter mentioned, the Defendant New York City Correction officers were employees of the defendants and was acting within the scope and authority of their employment. They are sued individually and in their official capacities as New York City Correction Officers.

5. At all times, the defendant New York City owned and maintained the New York City Correction Department ("CORRECTION") and employed the individual defendants sued herein.

6. That upon information and belief CORRECTION was responsible for the training of its officers.

7. That at all times herein the defendant, City, was negligent in the hiring, training, supervision, discipline, retention and promotion of the agents, servants and/or employees of the Correction department.

8. That at all times mentioned herein the defendant, City of New York knew or should have known of the discriminatory nature, bad judgment, and unlawful propensities of the officers involved in the violation of civil rights and intentional infliction of emotional distress of the plaintiff.

FACTS

9. On or about June 2, 2006, , plaintiff was an inmate at Rikers Island Correctional Facility.

10. On that date, at approximately 11:00 A.M., plaintiff observed another inmate being brutally assaulted by approximately five inmates in dormitory, C-95, Dorm 2, Main.

11. Plaintiff looked for Correction officers to intervene, but noticed that there were no officers in "the bubble", an observation post in which officers were supposed to be stationed.

12. Plaintiff felt compelled to help the inmate, and upon doing so, he got stabbed by

another inmate, causing a cut to his face which required approximately 15-20 stitches.

**FIRST CAUSE OF ACTION
FOR CIVIL RIGHTS VIOLATION**

13. Plaintiff reiterates and realleges the allegations stated in the above paragraphs.
14. Defendant officers violated plaintiff's civil rights under 42 U.S.C. § 1983.
15. Defendants, acting as municipal policymakers, in the hiring, training and supervision of the individual defendant officers, have pursued a policy and custom of deliberate indifference to the rights of persons in their domain. As such, defendants have violated plaintiff's rights to equal protection of the laws and liberty without due process of law in violation of the Fourth, Fifth and Fourteenth Amendments to the Constitution and 42 U.S.C. § 1983.
16. As a direct and proximate result of the aforementioned policy and custom of deliberate indifference to plaintiffs' rights, plaintiff sustained serious injuries, for which all defendants are liable.

**SECOND CAUSE OF ACTION
FOR FAILURE TO PROTECT**

17. Plaintiff repeats, reiterates and realleges each and every allegation set forth in paragraphs numbered 1-16 as if more fully set forth herein at length.
18. Defendant officers violated plaintiff's civil rights under 42 U.S.C. § 1983 in that their failure to protect plaintiff amounted to a violation of plaintiff's eighth amendment rights.

**THIRD CAUSE OF ACTION FOR VIOLATION
OF CIVIL RIGHTS PURSUANT TO 42 U.S.C. §1985**

19. Plaintiff reiterates and realleges the allegations contained in the above paragraphs.
20. Upon information and belief, the officers who were stationed in "the bubble" conspired with those inmates who assaulted the initial victim by agreeing to leave their post so as to enable the inmates to commit their attack without the prospect of Correction intervention.
21. Defendant officers conspired unlawfully to deprive plaintiff of the equal

protection of the laws, as well as the economic and non-economic injuries which reasonably flowed from their illegal conduct.

22. Defendants subjected Plaintiff to these deprivations maliciously and/or with a reckless disregard for whether Plaintiff's rights would be violated by their actions.

23. As a result of the aforesaid occurrence, Plaintiff suffered the damages and injuries aforesaid. All Defendants are liable for said damage and injuries.

PRAAYER FOR RELIEF

WHEREFORE, plaintiff prays that this Court:

1. Enter a judgment that defendants, by their actions, violated Plaintiff's rights under state law, and violated Plaintiff's rights under the Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States, 42 U.S.C. § 1983 and 42 U.S.C. § 1985, and violated Plaintiffs' rights under State law; and,

2. Enter a judgment, jointly and severally, against defendant officers for compensatory damages in the amount of FIVE HUNDRED THOUSAND (\$500,000.00) Dollars; and,

3. Enter a judgment, jointly and severally against Defendant officers for punitive damages in the amount of One Million (\$1,000,000.00) Dollars; and,

4. Enter an Order:

a) Awarding plaintiffs' reasonable attorney's fees and litigation expenses pursuant to 42 U.S.C. § 1988;

b) Granting such other and further relief which to the Court seems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: New York, New York
August 24, 2007

RESPECTFULLY,

STEVEN A. HOFFNER, ESQ.
Attorney for the Plaintiff
350 Broadway, Suite 1105
New York, New York 10013
(212) 941-8330
(SH-0585)

VERIFICATION

STEVEN A. HOFFNER, an attorney admitted to practice in the Courts of the State of New York states:

That the affirmant is the attorney of record for the plaintiff in the within action.

That the affirmant has read the foregoing Complaint and knows the contents thereof.

That the same is true as to affirmant's knowledge, except as to matters therein alleged to be on information and belief, and as to those matters affirmant believes them to be true.

That the reason this verification is made by affirmant is because the plaintiff does not reside in the county wherein affirmant maintains his office.

That the grounds of my belief as to all matters not stated upon my own knowledge are based upon investigation, client conferences, and review of the file.

The undersigned affirms that the following statements are true, under the penalties of perjury.

Dated: New York, New York
August 24, 2007

STEVEN A. HOFFNER, Esq.
(SH-0585)

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SOUTHERN DISTRICT OF NEW YORK

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